

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX**

BENEDETTO A. CERILLI, JR.,)
Plaintiff,) Case No. 1:17-cv-00019-WAL-GWC
v.)
CHRISTIANSTED ISLAND HOTEL, LLC,)
DAVID GAYANICH and)
CHRISTOPHER GAYANICH,)
Defendants.)

ANSWER OF CHRISTIANSTED ISLAND HOTEL, LLC

Christiansted Island Hotel, LLC (“CIHLLC”) files this Answer and, in response to the original complaint dated April 18, 2017 (the “Complaint”) filed by Benedetto A. Cerilli, Jr. (“Plaintiff”) CIHLLC states as follows:

COUNT I

1. Admitted.
2. Admitted.
3. Denied that Christopher Gayanich is a resident of the State of Oklahoma. By way of further response, Christopher Gayanich is a citizen of the United States Virgin Islands, where he resides on the island of St. Croix.
4. Admitted that David Gayanich is a resident of the State of Oklahoma. By way of further response, David Gayanich is a citizen of the State of Oklahoma. Denied that David Gayanich is the *de facto* manager of CIHLLC or is otherwise the manager of CIHLLC. Admitted that David Gayanich is the grandfather of Christopher Gayanich.
5. Denied.
6. Denied.

7. Admitted that Plaintiff previously held the title of manager of CIHLLC.

Admitted that Plaintiff was terminated from his position as manager of CIHLLC. Denied that Plaintiff rendered services to CIHLLC in accordance with the terms and provision of CIHLLC's operating agreement. By way of further response, Plaintiff actually violated the operating agreement in many respects and violated his fiduciary duties owed to CIHLLC and each of CIHLLC's then members in many ways and on many occasions.

8. Admitted that Plaintiff has demanded to be paid according to his bogus invoice.

Denied that CIHLLC owes anything to Plaintiff and, in fact, CIHLLC herein affirmatively states that Plaintiff is liable to CIHLLC and owes CIHLLC in connection with embezzlement and breach of fiduciary duty.

COUNT II

9. CIHLLC incorporates each of the foregoing responses as though fully set forth herein.

10. Denied.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction over this action.

2. The Court lacks personal jurisdiction over CIHLLC because Plaintiff obtained an extension of time to serve the Complaint on CIHLLC by virtue of grotesque falsehoods by omission and other outright affirmative falsehoods. In his Affidavit [D.I. 16-1] in support of his Objection to Dismissal and Motion for Extension of Time [D.I. 16] (the "Motion for Extension of Time to Serve"), Plaintiff was untruthful or, at the very least, lacked candor, with the Court as follows:

2.1. Plaintiff was untruthful with the Court by omitting to tell the Court that he is an attorney and member of the Rhode Island Bar, with decades of extensive litigation experience as a practicing attorney in the State of Rhode Island. See <https://www.ribar.com/members/directory/Details.aspx?ID=735> (last visited May 16, 2018 at 7:01 p.m. AST); see also <https://www.martindale.com/newport/rhode-island/benedetto-a-cerilli-jr-esq-1576829-a/> (last visited May 16, 2018 at 7:04 p.m. AST); <https://www.courtlistener.com/opinion/4112549/state-v-cerilli-p194-1154a-1998/> (last visited May 16, 2018 at 7:18 p.m. AST) (“noting that Cerilli received funds “as attorney for and on behalf of Newport Offshore”); http://www.labourers.org/projo_Patriarca_3-27-00.htm (last visited May 16, 2018 at 7:20 p.m.) (“Lawyer Benedetto A. Cerilli Jr. was involved with Legend Resorts, a Providence partnership that bought a hotel in the Virgin Islands, Hotel on the Cay.”)

2.2. Plaintiff was affirmatively untruthful with the Court by stating that he had difficulty serving the named defendants. As the former manager of CIHLLC, Plaintiff knows very well the location of the principal offices of CIHLLC at the Chenay Bay Beach Resort and, as the person who formed CIHLLC, Plaintiff knows very well the identity of CIHLLC’s resident agent for service of process, which is how Plaintiff eventually effected service on CIHLLC. Plaintiff also very well knows and knew that Christopher Gayanich resides at the Chenay Bay Beach Resort. Plaintiff also knows David Gayanich’s address in Oklahoma, having known David Gayanich for many years. Moreover, Plaintiff – as a senior practicing attorney and litigator – knows very well how to hire a process server to serve defendants in a lawsuit and knew that he was required to do so within the time limit established by Fed.R.Civ.P. 4(m).

3. The Complaint does not state a claim upon which relief can be granted.

4. Defendant is barred from relief under the Complaint pursuant to the doctrine of unclean hands.

5. Defendant is barred from relief under the Complaint pursuant to the doctrine of estoppel.

6. Defendant is barred from relief under the Complaint pursuant to the doctrine of waiver.

7. Defendant is liable to CIHLLC for breach of fiduciary duty and embezzlement in an aggregate amount that is greater than the amount claimed under the Complaint.

8. CIHLLC has a right to offset amounts owed to CIHLLC by Plaintiff against amounts purportedly owing by CIHLLC to Plaintiff which would result in a total elimination of any amount that could ever be owned by CIHLLC to Plaintiff.

CIHLLC DEMANDS TRIAL BY JURY ON ALL COUNTS OF THE COMPLAINT

Respectfully submitted,

HAMM ECKARD, LLP

Dated: May 16, 2018

By: /s/ Mark W. Eckard
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Counsel to Christiansted Island Hotel, LLC

CERTIFICATE OF SERVICE PURSUANT TO LRCi 5.4(i)(3)

I, Mark W. Eckard, pursuant to LRCi 5.4(i)(3), hereby certify that I filed the foregoing document via the Electronic Filing System of the District Court of the Virgin Islands. Due to Plaintiff's status as a *pro se* litigant undersigned counsel also certifies that he mailed the foregoing document to Plaintiff Benedetto A. Cerilli at P.O. Box 24921, Christiansted, VI, 00824 and has also served the foregoing document upon Plaintiff Benedetto A. Cerilli via email at bacjr3@gmail.com.

_____/s/ Mark W. Eckard_____